

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO**

ALBERT G. BARELA, *by his next friend,*
Cyndi Barela,

Plaintiff,

v.

Civ. No. 22-96 GJF/GBW

THE CITY OF HOBBS, et al.,

Defendants.

ORDER ON JOINT MOTION TO ALTER OR AMEND JUDGMENT

THIS MATTER is again before the Court on the parties’ “Joint Motion to Alter or Amend Judgment as to the Dismissal without Prejudice of Counts III and V” [ECF 107] (“Motion”). On August 7, 2023, the Court issued its “Indicative Ruling” under Federal Rule of Civil Procedure 62.1 in which it explained that it would have granted the Motion in its entirety had the parties not already filed their notices of appeal. ECF 109. The Tenth Circuit has since filed an Order clarifying that – notwithstanding the notices of appeal – this Court retains jurisdiction to decide the Motion in the first instance because the Motion (a) was timely filed, and (b) is included among the motions listed in Federal Rule of Appellate Procedure 4(a)(4)(A) that “toll[] the time to appeal from the judgment and suspend[] the effective date of the judgment.” ECF 110 at 3. The Tenth Circuit further reasoned that “the indicative ruling procedure and/or remand to the district court may not be necessary, or even appropriate,” under these circumstances. *Id.* at 4.

Accordingly, for the reasons set forth in its earlier “Indicative Ruling,” the Court **GRANTS** the Motion, **VACATES** its Final Judgment [ECF 96], **REINSTATES** Counts III and V of Plaintiff’s Complaint [ECF 1 at 1–9], and orders litigation of them to resume.

SO ORDERED.

A handwritten signature in black ink, appearing to read "G. J. Fouratt", written over a horizontal line.

THE HONORABLE GREGORY J. FOURATT
UNITED STATES MAGISTRATE JUDGE
Presiding by Consent